

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.07.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.31321 of 2017  
& WMP.Nos.34407 & 34408 of 2017

V.Durairaj

..Petitioner

Versus

1. The Revenue Divisional Officer,  
Attur,  
Salem District.

2.The Tahsildar,  
Gangavalli Taluk,  
Salem District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, to call for the records relating to the second respondent vide Roc.No.4170/2005/B1 dated 12.09.2005 and to quash the same and consequently direct the respondents to reinstate the petitioner in service forthwith with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar

For Respondents: Mr.V.Kathirvelu, Spl.G.P.

ORDER

By consent of the parties, the above writ petition is taken up for final disposal.

2.The petitioner while working as Village Assistant, has demanded and accepted illegal gratification of a sum of Rs.500/- for issuance of solvency certificate for submission to the Court as a surety. The petitioner was arrested and without any judicial custody, released on the same day. Though his period of incarceration not exceeded to 48 hours, he was placed under suspension by the 2<sup>st</sup> respondent, vide order dated 12.09.2005. In this regard, the petitioner has submitted a representation dated 22.08.2006, to the respondents as well as the District Revenue Officer, Salem praying for reviewing/revoking the order of suspension and since no orders have been passed, he came forward to file this writ petition.

3. Learned counsel for the petitioner would submit that the petitioner has been falsely implicated and he is under suspension for more than eleven years and prays for reviewing/revoking the order of suspension.

4. Per contra, Mr.V.Kadhirvelu, the learned Special Government Pleader, who accepts notice on behalf of the respondents, would submit that admittedly the petitioner was caught red-handed while demanding and accepting illegal gratification of a sum of Rs.500/- other than legal remuneration and since his period of incarceration was beyond 48 hours, he was placed under deemed suspension and unless and until the competent authority reviews the deemed order of suspension, the petitioner, as a matter of right, cannot demand to review/revoke the suspension order and therefore, prays for dismissal of this writ petition.

5. Heard the submission of learned counsel appearing for the petitioner, so also, the learned counsel appearing for the respondents.

6. The Hon'ble Supreme Court of India in the case of [Ajay Kumar Chowdary v. Union of India], 2015 (7) SCC 291 has held in paragraphs 11 and 12 as under :

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate

time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

7. A Division Bench of this Court also, taking note of the case of Ajay Kumar Chowdary, cited supra, and also in similar facts and situation, in the case of [K.Devendran V. District Collector and Another], in W.P.No.1398 of 2015, decided on 21.10.2016, in paragraph '6', has held as follows:

'6. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case of Ambigapathy, P.S. Vs. The Director of Public Health and Preventive Medicine, reported in 1991 Writ L.R.273, a Division Bench of this court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decisions, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed.'

9. Considering the aforesaid facts and submissions made, especially the fact that the petitioner is under suspension for a long period of 11 years, though for his involvement in a case of bribery under the Prevention of Corruption Act and it is not known when the aforesaid case is going to be concluded, this Court is of the view that the respondents ought to have review his order of suspension and revoke the same especially in view

of the law laid down in the case of [Ajay Kumar Chowdary v. Union of India], 2015 (7) SCC 291 as well as the Division Bench of this Court in the case of [K.Devendran V. District Collector and Another] cited supra. Accordingly, this Court directs the respondents to revoke the order of suspension within 15 days from the date of receipt of a copy of this order and post the petitioner in the place as they think fit and proper in the facts situation.

10. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,  
Attur,  
Salem District.

2.The Tahsildar,  
Gangavalli Taluk,  
Salem District.  
Cuddalore District

+lcc to Mr.S.Vijayakumar, Advocate sr.no.46743

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W.P.No.31321 of 2017

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